

The imposition of the local Retailers' Occupation Taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR.)

February 14, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of January 10, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, we respectfully request the Illinois Department of Revenue (the 'Department') issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

General Information

Enclosed please find an executed Form IL-2848 Power of Attorney, authorizing FIRM to represent COMPANY (the 'Company') before the Department to obtain a Private Letter Ruling ('PLR') on their behalf.

This PLR is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailer's Occupation Tax consequences of the actual business practices of the Company.

The Company is not currently engaged in litigation with the Department with regard to this or any other tax matter.

The Company requests that certain information be deleted from the PLR prior to dissemination to others. The Company requests that its name, address, and the name of its representative, as well as the names of the Company's Illinois locations be deleted.

Statement of Material Facts

The Company, through its operating branches, is engaged in the purchase and resale of equipment and supplies for the graphic arts industry. The Company's headquarters are located in STATE. In addition, the Company maintains two offices in Illinois ('Office A' and 'Office B'). Office A is located in CITY, Illinois and is the Company's Illinois branch sales office and shipping warehouse. Office B is located in CITY2, Illinois and is staffed by a Customer Credit / Relations Analyst ('Analyst') who reports to the Operations Manager and the Credit Manager.

A customer wishing to make a purchase from the Company requests pricing information from the Company's sales department. Customer orders are submitted to Office A via telephone, fax or through the Company's sales representatives. The customer's purchase order is entered into the Company's sales computer system NAME in Office A. NAME determines the credit worthiness of the customer based on parameters established for that customer. If all required parameters are satisfied, NAME releases a conditionally approved order which generates a printed ticket in Office A, the Company's warehouse. The printed ticket is used as a shipping directive for the warehouse personnel located in Office A. If NAME establishes a hold on a customer order, a report is generated listing all 'pending credit' customers ('Pending Credit Report').

The Analyst in Office B, on a scheduled basis (approximately once every two hours) accesses all conditionally approved orders released by NAME within the last review period. The Analyst records the order information on the orders released by NAME, entering them as orders which have satisfied the parameters established by the Analyst in Office B. Upon review of a given period's orders, the Analyst contacts the Company's warehouse personnel located in Office A either via electronic mail, fax or telephone and notifies Office A that the orders printed in Office A have received final approval in accordance with the parameters established by the Analyst in Office B.

The Analyst in Office B, on a scheduled basis (two-to-three times daily) accesses the Pending Credit Report to view the current customers with orders on hold. The Analyst researches customer history and makes a preliminary determination for each customer. The Analyst consults with the Credit Manager and makes the final determination on whether the order is released or rejected. Once the Analyst in Office B approves the order based on reviewing the customer's credit worthiness, the order is released for shipment to the customer's location. At the end of every month, the Analyst in Office B prepares a report detailing those orders that were approved upon review of orders released by NAME, orders that were approved upon the Analyst's review of held orders, and held orders that were rejected upon final determination by the Analyst.

In addition to the procedures noted above, the Analyst in Office B updates and establishes the credit parameters on NAME that are used to approve all customer orders. The updating of credit information also involves a credit review of inactive customers. This credit review of inactive customers involves a determination of additional information that is required to activate the account. The Analyst also reviews the credit limits of existing customers. The Analyst consults with the credit manager and establishes or modifies the credit limits for customer accounts. The Analyst then programs the updated limits into the NAME system. As a result, all orders released by NAME in Office A have been released because the orders have met the approval parameters established in Office B.

Furthermore, the Analyst maintains all customers' accounts. The Analyst follows-up on orders that have been shipped but not yet billed. Additionally, the Analyst produces a daily journal that summarizes the credit releases and the reason for the release. As part of the daily credit release journal, the Analyst reconciles the journal to the month end sales summary report. The Analyst runs and develops monthly credit release reports related to the customers' accounts and assists in the reconciliation of specific general ledger accounts.

In addition, the Analyst clears credit holds, establishes credit worthiness for new customer set up and responds to requests for increased credit limits. The Analyst tracks and analyzes trends in receivables regionally and by customer and reports these trends to management. The Analyst reviews existing customer files to re-approve a customer's credit limit or status by examining if the account has been inactive for a prescribed number of months, changes in ownership, bankruptcy, trend analysis of account, i.e., customer who usually paid within 30 days, has paid in 60-90 days on last three invoices and other criteria.

Finally, the Analyst is responsible for obtaining credit card authorization for those customers that prefer to pay using a credit card. When a new customer places an order with a request to pay by credit card, the order is 'held' and is sent to the Analyst. The Analyst has the new customer fill out a credit card authorization form and subsequently sends the form to the Credit Manager in Office A. The order remains held until the use of credit card is approved. Upon approval of the use of a credit card, the Analyst releases the order for fulfillment.

Issue

Whether the updating of the credit parameters, that are utilized in the automated acceptance of a customer order by NAME, the review and confirmation of orders released by NAME, the processing of credit releases for customers that require additional credit checks, and the processing of credit card authorizations conclusively establish CITY2 as the situs of the sale for Illinois Retailers' Occupation Tax ('ROT') purposes such that the state and local tax rate in effect in CITY2 applies to the sale despite certain other elements of the making of the sale may occur elsewhere.

Relevant Authorities

A home rule municipality, like CITY2, may impose a retailers' occupation tax on companies engaged in selling at retail within the municipality. 65 ILCS 5/8-11-1; see Ill. Admin. Code tit. 86, §§ 270.101(a), 270.115(a)(1).

The Department's regulations provide that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling' 86 Ill. Admin. Code 270.115(b)(1). Furthermore, the regulation states that if a purchase order which is an acceptance of the seller's *complete and unconditional* offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule Municipality Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. *Id.*

Therefore, under the Department's regulation, where a sale is situated for municipal retailer's occupation tax hinges on where the offer to sell becomes complete and unconditional. The Department has issued a number of Private Letter Rulings ('PLR') illustrating where a sale is situated. In PLR 87-0340 (May 14, 1987), the Department stated that the determination of where a sale is made is a question of 'fact as to where the purchase order is subject to acceptance. The business procedures or procedures surrounding the making of a binding agreement to sell on the part of a given dealership is going to control the question of which municipality is entitled to the tax.' *Id.*

The facts in PLR 87-0340 deal with an auto dealership headquartered and licensed in 'City A' that conducted two large used car sales in 'City B.' (Although not labeled in the PLR, for reasons of clarity we are referring to the two locations as 'City A' and 'City B'). Although more details about how the transactions took place were not provided, the Department did state, '[i]f a car dealer receives a purchase order in [City B], but then transmits the purchase order to the dealership location in another municipality where they may run a credit check on the potential buyer for financing purposes or other purposes, this would indicate that the purchase order is not subject to final acceptance at [City B], but rather is subject to final acceptance at the dealership location.' *Id.* The Department indicates that if a credit check is the final step in approving a sale 'completely and unconditionally,' then the sale is situated for Municipal Retailers' Occupation Tax purposes where this credit check is performed.

Finally in PLR 91-0162 (March 5, 1991), dealing with a multi-step approval process, the Department followed its 'complete and unconditional' test by confirming that the situs for sales tax purposes is where the final acceptance step occurred. In that case, an oil marketing and distribution company stated it used the following approval process: First, an order is taken by a customer service clerk who processes the order and determines if the customer has a commercial account. If the customer has a commercial account, the order is sent to the credit manager for credit approval at an unnamed location. If credit is approved, the order then goes to the Executive Vice President (based in the same location) for price determination and pricing authority. The order is then forwarded to the billing/pricing clerk for processing (who is also at the same location).

Once processed, the order is relayed to the commercial sales office in CITY3, Illinois where it goes through a final acceptance process. The commercial sales manager compares each order to a master customer record to verify the accuracy of the customer's name, address, account number, product and quantity ordered, and special care instructions pertaining to delivery. If the order is deemed accurate, the order is accepted. Only after the commercial sales manager accepts an order will the order be faxed to the dispatch center (at a separate location) for release. If an order is somehow inaccurate, the defect must be cured before the product will be released.

The company stated that in addition to sales tax savings for its customers, the CITY3 office is utilized primarily for administrative and personnel cost efficiencies. The company stated that based on its procedure for processing commercial sales, it believes that the ROT should be situated in CITY3, Illinois. Based on the facts the company provided, the Department agreed with the company's conclusion.

The Department's analysis in PLR 87-0340, PLR 87-0262 and PLR 91-0162 illustrate how the Company's transaction process should be treated. The Company receives purchase orders at one location, where the orders are input into the company's

computer system, and transmits the pending orders to another location for credit verification. Since the final test is performed in CITY2, the a sale will not become 'complete and unconditional' until the approval process is completed there. As a result, the Company's sales should be sitused in CITY2 for municipal retailer's occupation tax purposes.

The Company knows of no authority contrary to the above-cited authorities.

Conclusion

The facts indicate that the Analyst in Office B determines the credit limits for customers and programs the source of the parameters that are required for all sales and this is the final action necessary to bind the Company to the sales contract.

Therefore we respectfully request that the Department issue a ruling stating that the receipt of a customer's acceptance of the Company's unconditional offer to sell at Office B conclusively establishes CITY2 as the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY2 HRMROT) in effect in CITY2 applies.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Based upon the facts set forth in your letter, CITY2 is the jurisdiction whose local tax rate applies to sales by COMPANY.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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